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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. VN-2008-2103

KENNETH BAILEY
335 E. Tamarack Street, #6
Inglewood, CA 90301

Applicant for Vocational Nurse License


Respondent.

DECISION DENYING PETITION FOR RECONSIDERATION

The Board of Vocational Nursing and Psychiatric Technicians hereby denies your Petition for Reconsideration of its May 27, 2011 Decision in the above-entitled matter.

This Decision shall become effective on June 6, 2011.

IT IS SO ORDERED this 3rd day of June, 2011.



John P. Vertido, L.V.N.
President

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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. VN-2008-2103

KENNETH BAILEY
335 E. Tamarack Street, #6
Inglewood, CA 90301

OAH No.: 2010060858

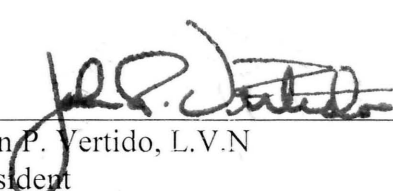
Applicant for Vocational Nurse License

Respondent.

ORDER DELAYING DECISION

Pursuant to Section 11521(a) of the Government Code, the Board of Vocational
Nursing and Psychiatric Technicians (Board) hereby issues this Order Delaying Decision in the
above-stated case until June 6, 2011. The purpose of the delay is to permit the Board to review your
Petition for Reconsideration.

IT IS SO ORDERED this 12th day of May, 2011.



John P. Vertido, L.V.N.
President

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BEFORE THE
BOARD OF VOCATIONAL NURSING
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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Statement of Issues
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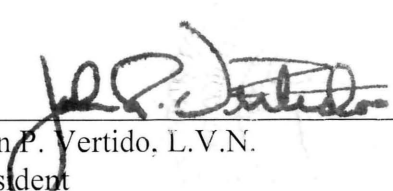
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on May 27, 2011.

IT IS SO ORDERED this 27th day of April, 2011.



John P. Vertido, L.V.N.
President

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

KENNETH BAILEY,
a.k.a. KENNRTH BAILEY,
a.k.a. BAILEY KENNETH,

Respondent.

Case No. VN 2008-2103

OAH No. 2010060858

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), heard this matter on January 4, 2011, in Los Angeles.

M. Travis Peery, Deputy Attorney General, appeared on behalf of Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant), Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, State of California.

Stephanie Sauter, Attorney at Law, Law Project of Los Angeles, appeared on behalf of Kenneth Bailey (Respondent), who was present.

At the hearing, Complainant moved to amend the Statement of Issues to delete paragraph 12(i) and to delete all references to paragraph 12(i). There was no objection, and the ALJ granted the motion.

Oral and documentary evidence was received, the record was closed, and the matter was submitted on January 4, 2011.

FACTUAL FINDINGS

Jurisdiction

1. On May 17, 2010, Complainant filed and served the Statement of Issues in this matter while acting in her official capacity.
2. On January 1, 2009, Respondent applied to the Board for licensure as a vocational nurse. The Board denied Respondent's application on October 29, 2009. Respondent appealed the denial, and this hearing ensued.

Respondent's Criminal Convictions

3. Respondent suffered from cocaine and alcohol addiction from 1991 to 1997 or 1998. He committed crimes while under the influence of those substances. Over the course of that period, Respondent was convicted at least seven times for petty theft, drinking on public property, possession of a narcotic controlled substance, assault, and other substance-related crimes, as listed below.

4. On September 11, 1997, in the Superior Court of the State of California, County of Los Angeles, Case Number YA024861, Respondent pled guilty and was convicted of violating Health and Safety Code section 11350, subdivision (a) (possession of a narcotic controlled substance), a felony (the September 1997 conviction). The court issued Respondent a certificate of rehabilitation and recommendation for pardon on July 1, 2010, under Penal Code section 4852.13.

5. On May 28, 1997, in the Superior Court of the State of California, County of Los Angeles, Case Number 7WL01106, Respondent pled nolo contendere and was convicted of violating Penal Code section 484, subdivision (a)/666 (petty theft with a prior), a misdemeanor. On January 27, 2010, the court granted Respondent's petition for dismissal under Penal Code sections 1203.4 and 1203.4a.

6. On December 2, 1996, in the Superior Court of the State of California, County of Los Angeles, Case Number 6IW11018, Respondent pled nolo contendere and was convicted of violating Penal Code section 484, subdivision (a) (petty theft), a misdemeanor. On January 26, 2010, the court ordered that the verdict of guilt be set aside and vacated, that a plea of not guilty be entered, and that the complaint be dismissed under Penal Code sections 1203.4 and 1203.4a.

7. On November 19, 1996, in the Municipal Court of the State of California, County of Los Angeles, Case Number 6IW08743, Respondent pled nolo contendere and was convicted of violating Inglewood Municipal Code section 5-18 (drinking on public property), a misdemeanor. On June 24, 2010, the court ordered that the verdict of guilt be set aside and vacated, that a plea of not guilty be entered, and that the complaint be dismissed under Penal Code sections 1203.4 and 1203.4a.

8. On March 27, 1995, in the Municipal Court of the State of California, County of Los Angeles, Case Number 95M02623, Respondent pled nolo contendere and was convicted of violating Penal Code section 484, subdivision (a) (petty theft), a misdemeanor.

9. On January 19, 1995, in the Municipal Court of the State of California, County of Los Angeles, Case Number 95M00135, Respondent pled nolo contendere and was convicted of violating Penal Code section 240 (assault), a misdemeanor.

10. On May 10, 1991, in the Municipal Court of the State of California, County of Los Angeles, Case Number 91W02977, Respondent pled nolo contendere and was convicted of violating Penal Code section 602, subdivision (j) (trespass: built fires), a misdemeanor.

11. Respondent stopped abusing drugs and alcohol for almost 10 years. In the summer of 2006, Respondent relapsed, and began a nine-month period of drug abuse, using marijuana and cocaine.

12. On May 7, 2007, in the Superior Court of California, County of Los Angeles, Case Number 7WA01195, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 602, subdivision (k) (trespass; injury to property), a misdemeanor (the May 2007 conviction). The court suspended imposition of sentence and placed Respondent on probation for 12 months, on terms and conditions including that he pay a restitution fine in the amount of \$100. The circumstances surrounding the May 2007 conviction are as follows: on or about April 19, 2007, during an investigation at a gas station in Los Angeles by the police, Respondent was observed with a squeegee attempting to wash customers' car windows and pump gas. Respondent admitted that he had smoked marijuana and drunk some beers, and was trying to make some money. He was in possession of smoking paraphernalia. Respondent completed the terms of probation. On January 27, 2010, the court ordered that the verdict of guilt be set aside and vacated, that a plea of not guilty be entered, and that the complaint be dismissed under Penal Code sections 1203.4 and 1203.4a.

Respondent's Application for Vocational Nurse Licensure

13. On his vocational nurse license application, Respondent checked the box indicating that he had been convicted of an offense. Respondent provided details of the May 2007 conviction as well as of the September 1997 conviction. He did not list the other convictions that took place between 1991 and 1997.

14. Respondent testified that he filled out the application on the last day of school, along with the other students. He disclosed the most recent conviction and the worst of the older convictions. He failed to disclose the other old convictions because he could not immediately recall them and because he was embarrassed to be pondering and trying to remember them while all the other students were turning in their applications.

Rehabilitation

15. Respondent, who is 55 years old, currently resides in Inglewood. He has a 15-year-old son, who does not live with him.

16. Respondent admitted at hearing that he committed all the crimes for which he was convicted, explaining that he was under the influence of drugs and alcohol at the time. After his release from prison and fire camp as a result of his September 1997 conviction, Respondent immediately joined Alcoholics Anonymous (AA). His relapse, which began in the summer of 2006, ended with the arrest leading to his May 2007 conviction. After that conviction, Respondent immediately sought help from the Veterans' Administration (VA) and from AA. He got a sponsor at AA, and went through an inpatient drug rehabilitation program at the VA hospital. Respondent testified that he "felt pathetic" after the conviction, and went back to his AA friends.

17. Since then, Respondent has not abused drugs or alcohol. He has been attending AA three times per week (twice per week when he is in school), and Cocaine Anonymous meetings every Saturday. In the AA 12-step program, Respondent is currently on step nine, making amends.

18. Respondent lived at the VA, in the VA's housing program, after his May 2007 conviction, because he was in nursing school and could not afford housing. He left the housing program in the summer of 2009 to live on his own. He has worked at the VA since April 2010, in operating room supplies, and earns enough money to pay his rent and living expenses. He observes procedures in surgery and talks to the operating room nurses, in order to keep up his nursing skills.

19. Respondent attended American Career College in 2008. Upon completing the nursing program there, he applied for a vocational nurse license. Respondent currently attends El Camino College in Torrance, taking his general education requirements and prerequisites for registered nursing classes. He is working towards completing the requirements to go to registered nursing school. He received four As and one B in his courses during the spring and fall 2010 semesters.

20. Respondent testified that his 2006 relapse was triggered by feelings of low self-esteem and of worthlessness. He separated from his support system, and his pattern of life changed. He frequented liquor stores and back alleys. He testified that he was never a recreational user; drugs took him into a whole subculture. He no longer sees any of the people living that lifestyle.

21. Respondent further testified as follows. He does not feel bad about himself now, and that things have been going very well since the May 2007 conviction. He has friends at his church who attend AA meetings with him. He has no cravings for drugs or alcohol. He feels he is a different person. The things that used to make him relapse do not bother him anymore. He has a support system. He listens to other peoples' problems, as other AA members call him, on average, twice per day, and it keeps him aware that he is in recovery. When asked what he does when he has feelings of low self-esteem, Respondent testified that, "Oh, I make phone calls all the time." His sponsor has told him that it is time for Respondent to start sponsoring others.

22. Respondent further testified as follows. He knows he must stay sober to continue his pursuit of a nursing license. He pays for his son's expenses, and they spend weekends together. It is very important to Respondent that his son be able to look up to him.

23. Kenneth A. Johnson, Respondent's AA sponsor, testified as follows. He has known Respondent for at least 15 years, and has been his sponsor since 2007. Respondent's commitment to sobriety is very strong. Respondent attends meetings regularly and calls Mr. Johnson every day. Respondent is very busy and active, both in and out of AA, attending school and working. Respondent is different since his relapse in 2006-2007—he attends meetings regularly, discusses his progress, and calls Mr. Johnson daily to discuss the ups and downs in his life. Respondent is dedicated to his studies and his work, and is very enthusiastic and eager to begin a career in nursing. Respondent seems to have the tools now—work, school, caring for

his son—to deal with stresses in his life. He leads a full life. “I wouldn’t have the energy” that Respondent exhibits, traveling to school and work on his bicycle and by bus.

24. Respondent submitted a letter of support from his employer, Mr. Luis Inofuentes, Surgery Purchasing Manager at the VA. Mr. Inofuentes wrote, among other things, that Respondent “has demonstrated that he could work with out any supervision, and he willingly would volunteer to go the extra mile, he has also demonstrated the reliability and accountability that our veteran patient requires.”

25. Respondent also submitted a letter of support from Saira Kinuthia, RN, MSN, Assistant Director, Vocational Nursing Program, American Career College. Respondent testified that he had asked Ms. Kinuthia to help him document his rehabilitation. She wrote that Respondent graduated in December 2008 with a 4.0 grade point average and an award as Most Improved in Clinical, and that he was recognized for having perfect attendance. She wrote further that:

[Respondent] was conscientious, compassionate, provided very good patient care, knowledgeable, and a very good team worker.

I believe that [Respondent] would make a very positive contribution to the field of Nursing and that he would be an asset to any company he chooses once he is licensed. In these difficult financial times and unstable job markets it would be very advantageous for [Respondent] to receive his hard earned and well deserved LVN license to enhance his work life.

26. Respondent volunteers at the Sunday school at his church. La Roya V. Jordan, a pastor at Respondent’s church, wrote that he has known Respondent and his family for nine years, that Respondent “has stepped up the role of responsibility of father for his son . . . and been instrumental in his successful spiritual and educational rearing,” and that Respondent has demonstrated a “continuous and uninterrupted dedication to serve.” Mr. Jordan addressed Respondent’s efforts to obtain his licensure, and wrote that “I am encouraged by [Respondent’s] desire, zeal and commitment”

27. Respondent testified credibly at hearing, admitting to having committed the crimes for which he was convicted, describing the cause of his 2006 relapse and the reason for the omissions on his application, and frankly assessing the factors that have triggered his drug use in the past and the steps he has taken to address those triggers. His testimony was corroborated by that of his AA sponsor and by letters from his employer, the assistant director of the vocational nursing program at his career college, and his pastor.

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LEGAL CONCLUSIONS

1. Business and Professions Code section 2866¹ authorizes the Board to deny an application for licensure as provided in section 480.

2. Under sections 480, subdivision (a)(1), and 490, the Board may deny an application for licensure if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which an application is made.

3. Section 480, subdivision (a)(2), authorizes the Board to deny licensure for any act involving dishonesty, fraud, or deceit with the intent to substantially benefit the applicant. (See also section 2878, subdivision (j).)

4. Section 480, subdivision (a)(3), authorizes the Board to deny licensure for any act which if done by a licentiate of the occupation in question would be grounds for suspension or revocation of the license if the act is substantially related to the qualifications, functions, and duties of the license for which the application was made. Authorization to suspend or revoke a vocational nurse license for conviction of a crime substantially related to the qualifications, functions, and duties of a licensee is found in section 2878, subdivision (f). Under section 2878, subdivision (a), the Board may suspend or revoke a license for unprofessional conduct. That includes, under section 2878.5, subdivision (a), obtaining, possessing, or administering to himself or herself any controlled substance as defined in Division 10 of the Health and Safety Code or any dangerous drug as defined in section 4022, without a prescription. That also includes, under section 2878.5, subdivision (b), using any controlled substance or any dangerous drug or alcoholic beverages to an extent or in a manner dangerous to himself or herself or the public. It also includes, under section 2878.5, subdivision (c), conviction of a criminal offense involving possession or consumption of any narcotic or dangerous drug. (See also section 2875.)

5. Under section 480, subdivision (c), the Board may deny licensure on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application. (See also section 2878, subdivision (e).)

6. California Code of Regulations, title 16, section 2521, provides:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties

¹ All further statutory references are to the Business and Professions Code, except as otherwise stated.

of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare.

7. Cause exists to deny Respondent's application for licensure under sections 2866 and 480, subdivisions (a)(1) through (3) and (c); section 2878, subdivisions (a), (e), (f), and (g); section 2878.5, subdivisions (a) through (c); and California Code of Regulations, title 16, section 2521, in that, based on Factual Findings 3 through 14, and Legal Conclusions 1 through 6,

- a. Respondent was convicted of crimes that are substantially related to the qualifications, functions, or duties of the license for which he has applied and that evidence present or potential unfitness to perform the functions authorized by the license, including crimes involving possession of controlled substances and use of controlled substances and alcohol to an extent or in a manner dangerous to himself and the public, and
- b. Respondent committed a dishonest act and gave a false statement of fact in connection with his application for licensure

8. California Code of Regulations, title 16, section 2522, provides that, "[w]hen considering . . . the denial of a license under Section 480 of the Business and Professions Code . . . , the Board, in evaluating the rehabilitation of an individual and his or her present eligibility for a license," is to consider criteria including the nature of the applicant's acts and crimes, actual or potential harm to the public, criminal actions taken by the courts, mitigation evidence, compliance with terms of sentences and probation, time passed since the acts or offenses occurred, evidence of proceedings to dismiss a conviction, and other rehabilitation evidence.

9. Respondent has satisfied the relevant regulatory criteria for rehabilitation. Respondent's convictions are all for drug- or alcohol-related crimes; he is now regularly attending programs at AA and Cocaine Anonymous, and has not used drugs or alcohol since his May 2007 conviction. He has complied with all of the terms of his criminal probations, and has had most, if not all, of his convictions dismissed. His most recent conviction is for an offense that occurred almost four years ago; all of his other convictions are quite remote in time, having occurred between 1991 and 1997. Respondent submitted persuasive mitigation and rehabilitation evidence regarding all the charges alleged in the Statement of Issues. While Respondent did not disclose all of his convictions on his licensure application, his disclosure of the most recent conviction and of one of the more serious convictions from the 1990s, and his explanation of the circumstances under which he filled out the application, supports the inference that he did not intend to conceal pertinent information from the Board. And although he confessed to embarrassment when he was completing the application, Respondent readily admitted to having committed the acts underlying all of his convictions, and he openly discussed the issues and triggers he continues to deal with. He completed his vocational nurse licensing program at college while living at the VA, and found work in a setting conducive to

his continued training for licensure. He has continued to further his education in preparation for licensure, and is involved in raising his son and in volunteer activities. In sum, Respondent has established that the public interest would be protected if he were granted a probationary license. Under the circumstances, the accompanying order is appropriate at this time to protect the public based on Factual Findings 3, 11, and 14 through 27.

ORDER

Respondent's application for licensure as a vocational nurse is granted. A license shall be issued to Respondent. The license shall immediately be revoked, the order of revocation stayed, and Respondent placed on probation for a period of three years on the following terms and conditions:

1. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by Respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of himself/herself within thirty (30) days of the effective date of the decision.

If Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Probation Program.

Upon successful completion of probation, Respondent's license will be fully restored.

3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations, and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to

Respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, Respondent shall provide a list of all states and territories where he/she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which he/she has applied for or holds a vocational/practical nurse, psychiatric technician, and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if he/she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If Respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he/she resides or practices outside of California. Respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon his/her return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his/her employer of the probationary status of

Respondent's license. This notification to Respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his/her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if he/she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in his/her licensed capacity in the state of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, Respondent shall obtain approval from the Board of the supervision provided to Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his or her own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify Respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

11. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times, maintain an active current license with the Board including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

12. LICENSE SURRENDER

During probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A licensee who surrenders his/her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or one (1) year for a license surrendered for a mental or physical illness.

13. VIOLATION OF PROBATION

If Respondent violates the conditions of his/her probation, the Board, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of Respondent's license. If during probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

14. CHEMICAL DEPENDENCY SUPPORT & RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by Respondent with each written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

15. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

16. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

17. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and Respondent's current employer.

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18. TAKE AND PASS LICENSURE EXAMINATION

Prior to commencing practice, Respondent shall take and pass the licensure exam currently required of new applicants within two (2) years from the effective date of the Board's decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until Respondent has successfully passed the licensure examination and a license is issued by the Board.

DATED: February 10, 2011

A handwritten signature in dark ink, appearing to read "Howard W. Cohen", is written over a horizontal line.

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

1 Edmund G. Brown Jr.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GLORIA A. BARRIOS
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
Against:

Case No. VN-2008-2103

STATEMENT OF ISSUES

12 **KENNETH BAILEY**
13 **a.k.a., KENNRTH BAILEY**
14 **ak.a., BAILEY KENNETH**
335 E. Tamarack Street, #6
15 Inglewood, CA 90301

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Statement of Issues
20 solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and
21 Psychiatric Technicians, Department of Consumer Affairs.

22 2. On or about January 1, 2009, the Board of Vocational Nursing and Psychiatric
23 Technicians (Board) received an application for a Vocational Nurse License from Kenneth
24 Bailey, also known as Kennrth Bailey and Bailey Kenneth (Respondent). On or about December
25 24, 2008, Respondent certified under penalty of perjury to the truthfulness of all statements,
26 answers, and representations in the application. The Board denied the application on October 29,
27 2009.

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1 5. Section 490 states:

2 "(a) In addition to any other action that a board is permitted to take against a licensee, a
3 board may suspend or revoke a license on the ground that the licensee has been convicted of a
4 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
5 or profession for which the license was issued.

6 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
7 discipline a licensee for conviction of a crime that is independent of the authority granted under
8 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
9 of the business or profession for which the licensee's license was issued.

10 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
11 conviction following a plea of nolo contendere. Any action that a board is permitted to take
12 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
13 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
14 made suspending the imposition of sentence, irrespective of a subsequent order under the
15 provisions of Section 1203.4 of the Penal Code."

16 6. Section 2866 provides, in pertinent part, that the Board of Vocational Nursing and
17 Psychiatric Technicians (Board) may deny a license when it finds that the applicant has
18 committed any acts constituting grounds for denial of licensure under section 480 of that Code.

19 7. Section 2875 provides, in pertinent part, that the Board of Vocational Nursing and
20 Psychiatric Technicians (ABoard@) may discipline the holder of a vocational nurse license for any
21 reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice
22 Act.

23 8. Section 2878 states, in pertinent part:

24 "The Board may suspend or revoke a license issued under this chapter [the Vocational
25 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

26 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

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1 "(e) Making or giving any false statement or information in connection with the application
2 for issuance of a license.

3 "(f) Conviction of a crime substantially related to the qualifications, functions, and duties
4 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive
5 evidence of the conviction.

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7 "(j) The commission of any act involving dishonesty, when that action is related to the
8 duties and functions of the licensee."

9 9. Section 2878.5 states, in pertinent part:

10 "In addition to other acts constituting unprofessional conduct within the meaning of this
11 chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed
12 under this chapter to do any of the following:

13 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
14 physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or
15 administer to another, any controlled substance as defined in Division 10 of the Health and Safety
16 Code, or any dangerous drug as defined in Section 4022.

17 "(b) Use any controlled substance as defined in Division 10 of the Health and Safety
18 Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in
19 a manner dangerous or injurious to himself or herself, any other person, or the public, or to the
20 extent that the use impairs his or her ability to conduct with safety to the public the practice
21 authorized by his or her license.

22 "(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous
23 drug, or the prescription, consumption, or self-administration of any of the substances described
24 in subdivisions (a) and (b) of this section, in which event the record of the conviction is
25 conclusive evidence thereof."

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1 **REGULATORY PROVISIONS**

2 10. California Code of Regulations, title 16, section 2521, states, in pertinent part:

3 "For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
4 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
5 considered to be substantially related to the qualifications, functions or duties of a licensed
6 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed
7 vocational nurse to perform the functions authorized by his license in a manner consistent with
8 the public health, safety, or welfare."

9 **CONTROLLED SUBSTANCES**

10 11. "Marijuana," is a Schedule I controlled substance as designated by Health and Safety
11 Code section 11054, subdivision (d)(13) and is categorized as a dangerous drug pursuant to
12 Business and Professions Code section 4022.

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(Conviction of Crimes)**

15 12. Respondent's application is subject to denial under sections 2866 and 480,
16 subdivision (a)(1), in that Respondent was convicted of crimes, as follows:

17 a. On or about May 7, 2007, after pleading nolo contendere, Respondent was convicted
18 of one misdemeanor count of violating Penal Code section 602, subdivision (k) [trespass: injury
19 to property] in the criminal proceeding entitled *The People of the State of California v. Kenneth*
20 *Bailey* (Super. Ct. Los Angeles County, 2007, No. 7WA01195). The Court placed Respondent on
21 probation for a period of 12 months, with terms and conditions. The circumstances surrounding
22 the conviction are that on or about April 19, 2007, during an investigation at a 76 Gas Station, in
23 Los Angeles, CA, by the Los Angeles Police Department, Respondent was observed with a
24 squeegee attempting to wash car windows of customers and pump gas. When asked what he was
25 doing at the gas station, Respondent admitted that he had smoked some weed, drank some beers,
26 and wanted to make some money. Respondent was subsequently arrested and admitted to having

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1 some weed in his wallet. During the booking, Respondent was found to be in possession of a
2 glass pipe, with a white residue, and a green leafy substance resembling marijuana.

3 b. On or about September 11, 1997, after pleading guilty, Respondent was convicted of
4 one felony count of violating Health and Safety Code section 11350, subdivision (a) [possession
5 of a narcotic controlled substance] in the criminal proceeding entitled *The People of the State of*
6 *California v. Kenneth Bailey* (Super. Ct. Los Angeles County, 1997, No. YA024861). The Court
7 sentenced Respondent to 111 days in Los Angeles County Jail and placed him on formal
8 probation for a period of 3 years, with terms and conditions. The circumstances surrounding the
9 conviction are that on or about July 8, 1995, Respondent was found to be in possession of a
10 narcotic controlled substance.

11 c. On or about May 28, 1997, after pleading nolo contendere, Respondent was convicted
12 of one misdemeanor count of violating Penal Code section 484, subdivision (a)/666 [petty theft/
13 with a prior] in the criminal proceeding entitled *The People of the State of California v. Kenneth*
14 *Bailey* (Super. Ct. Los Angeles County, 1997, No. 7WL01106). The Court sentenced Respondent
15 to 90 days in Los Angeles County Jail and placed him on probation for a period of 36 months,
16 with terms and conditions. The circumstances surrounding the conviction are that on or about
17 March 9, 1997, Respondent stole, took, and carried away the personal property of another.

18 d. On or about December 2, 1996, after pleading nolo contendere, Respondent was
19 convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty
20 theft] in the criminal proceeding entitled *The People of the State of California v. Kenneth Bailey*
21 (Super. Ct. Los Angeles County, 1996, No. 6IW11018). The Court sentenced Respondent to 180
22 days in Los Angeles County Jail and placed him on probation for a period of 36 months, with
23 terms and conditions. The circumstances surrounding the conviction are that on or about
24 November 15, 1996, Respondent stole, took, and carried away the personal property of another, to
25 wit: Sav-On Drug Store.

26 e. On or about November 19, 1996, after pleading nolo contendere, Respondent was
27 convicted of one misdemeanor count of violating Inglewood Municipal Code section 5-18
28 [drinking on public property] in the criminal proceeding entitled *The People of the State of*

1 *California v. Kenneth Bailey* (Super. Ct. Los Angeles County, 1996, No. 61W08743). The Court
2 sentenced Respondent to 5 days in Los Angeles County Jail. The circumstances surrounding the
3 conviction are that on or about September 7, 1996, Respondent was arrested by the Inglewood
4 Police Department for drinking on public property.

5 f. On or about March 27, 1995, after pleading nolo contendere, Respondent was
6 convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty
7 theft] in the criminal proceeding entitled *The People of the State of California v. Kenneth Bailey*
8 (Super. Ct. Los Angeles County, 1995, No. 95M02623). The Court sentenced Respondent to 4
9 days in Los Angeles County Jail. The circumstances surrounding the conviction are that on or
10 about March 24, 1995, Respondent stole, took, and carried away the personal property of Prado's
11 Centinela Nursery, in Inglewood, CA, to wit: Plants with a total value of approximately \$25.00
12 and not more than \$400.00.

13 g. On or about January 19, 1995, after pleading nolo contendere, Respondent was
14 convicted of one misdemeanor count of violating Penal Code section 240 [assault] in the criminal
15 proceeding entitled *The People of the State of California v. Kenneth Bailey* (Super. Ct. Los
16 Angeles County, 1995, No. 95M00135). The Court sentenced Respondent to 10 days in Los
17 Angeles County Jail and placed him on probation for 12 months, with terms and conditions. The
18 circumstances surrounding the conviction are that on or about January 17, 1995, Respondent
19 committed a violent injury on another person.

20 h. On or about May 10, 1991, after pleading nolo contendere, Respondent was convicted
21 of one misdemeanor count of violating Penal Code section 602, subdivision (j) [trespass: built
22 fires] in the criminal proceeding entitled *The People of the State of California v. Kenneth Bailey*
23 (Super. Ct. Los Angeles County, 1991, No. 91W02977). The Court sentenced Respondent to 6
24 days in Los Angeles County Jail and placed him on probation for 12 months, with terms and
25 conditions. The circumstances surrounding the conviction are that on or about April 9, 1991,
26 Respondent trespassed onto the property of another and built a fire.

27 i. On or about May 10, 1991, Respondent was convicted of one misdemeanor count of
28 violating Penal Code section 484, subdivision (a) [petty theft] in the criminal proceeding entitled

1 *The People of the State of California v. Kenneth Bailey* (Super. Ct. Los Angeles County, 1991,
2 No. 91W02972). The circumstances surrounding the conviction are that in 1991, Respondent
3 stole, took, and carried away the personal property of another.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(Acts Involving Dishonesty, Fraud or Deceit)**

6 13. Respondent's application is subject to denial under sections 2866 and 480,
7 subdivision (a)(2), in that Respondent committed dishonest acts, fraud, or deceit with the intent to
8 substantially benefit himself, or substantially injure another. Complainant refers to, and by this
9 reference incorporates, the allegations set forth above in paragraph 12, subparagraphs (a), (c), (d),
10 (f), (h), and (i), inclusive, as though set forth fully.

11 **THIRD CAUSE FOR DENIAL OF APPLICATION**

12 **(Knowingly Made A False Statement of Fact)**

13 14. Respondent's application is subject to denial under sections 2866 and 480,
14 subdivision (c), in that Respondent knowingly made a false statement of fact, by failing to
15 disclose seven of nine conviction cases against him on his application and record of conviction
16 for licensure. Complainant refers to, and by this reference incorporates, the allegations set forth
17 above in paragraph 12, subparagraphs (c) through (i), inclusive, as though set forth fully. In
18 addition, Respondent signed and certified under penalty of perjury, under the laws of the State of
19 California, that the foregoing was true and correct on page 1 of his application and record of
20 conviction for licensure.

21 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

22 **(Acts Warranting Denial of Licensure)**

23 15. Respondent's application is subject to denial under sections 2866 and 480,
24 subdivision (a)(3)(A) and (B), in that Respondent committed acts which if done by a licensee
25 would be grounds for suspension or revocation of his license, as follows:

26 a. Respondent was convicted of crimes substantially related to the qualifications,
27 functions, or duties of a licensed vocational nurse which to a substantial degree evidences his
28 present or potential unfitness to perform the functions authorized by his license in a manner

1 consistent with the public health, safety, or welfare, in violation of sections 2878, subdivision (f)
2 and 490, in conjunction with California Code of Regulations, title 16, section 2521. Complainant
3 refers to, and by this reference incorporates, the allegations set forth above in paragraph 12,
4 subparagraphs (a) through (i), inclusive, as though set forth fully.

5 b. Respondent committed dishonest acts, in violation of section 2878, subdivision (j).
6 Complainant refers to, and by this reference incorporates, the allegations set forth above in
7 paragraph 12, subparagraphs (a), (c), (d), (f), (h), and (i), inclusive, as though set forth fully.

8 c. Respondent made or gave a false statement of fact or information in connection with
9 his application for issuance of a license, in violation of section 2878, subdivision (e).
10 Complainant refers to, and by this reference incorporates, the allegations set forth above in
11 paragraph 14, as though set forth fully.

12 d. Respondent obtained or possessed a controlled substance, in violation of section
13 2878, subdivision (a), as defined in section 2878.5 (a). Complainant refers to, and by this
14 reference incorporates, the allegations set forth above in paragraph 12, subparagraphs (a) and (b),
15 inclusive, as though set forth fully.

16 e. Respondent used a controlled substance and alcoholic beverages to an extent or in a
17 manner dangerous and injurious to himself, and the public, in violation of section 2878,
18 subdivision (a), as defined in section 2878.5 (b). Complainant refers to, and by this reference
19 incorporates, the allegations set forth above in paragraph 12, subparagraph (a), as though set forth
20 fully.

21 f. Respondent was convicted of a criminal offense involving the possession of a
22 controlled substance, in violation of section 2878, subdivision (a), as defined in section 2878.5
23 (c). Complainant refers to, and by this reference incorporates, the allegations set forth above in
24 paragraph 12, subparagraph (b), as though set forth fully.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying the application of Respondent for a Vocational Nurse License.
2. Taking such other and further action as deemed necessary and proper.

DATED: May 4, 2010.



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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